
(2002) 09 BOM CK 0117
In the Bombay High Court
Case No : A.S.W.P. No. 5083 of 2002

Avinash D. Mandvikar

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Citation : (2003) 96 FLR 282 : (2003) 1 LLJ 439

Hon'ble Judges : Ranjana Desai, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; R.V. Govilkar and H.P. Bharadeo for Respondent Nos. 1 and 2, for the Respondent

Judgement

This Judgment has been overruled by : Bank of India and Another Vs. Avinash D. Mandvikar and Others, AIR 2005 SC 3395 : (2005) 107 FLR 610 : (2005) 8 JT 326 : (2005) 7 SCC 690 : (2005) SCC(L&S) 1011 : (2005) 3 SCR 170 Supp : (2006) 1 SLJ 47 : (2005) 2 UJ 1332

1. Rule returnable forthwith. Respondent waive service. By consent petition is taken up for final hearing.

2. The petitioner joined the services of the respondent bank on October 15, 1976 under the reserved category of Scheduled Tribe. By the order of appointment respondent bank put the petitioner on probation for a period of six months and his services came to be confirmed on putting satisfactory services of six months. In 1984 the petitioner was promoted in the reserved category to the post of Junior Management Scale I. The petitioner was asked to submit fresh caste certificate in the revised form as he was promoted in the reserved category and his caste certificate was referred to the Committee for scrutiny and verification of Tribe Claims, Pune Division, Pune for verification on June 13, 1987. The Scrutiny Committee invalidated the caste certificate of the petitioner vide order dated July 18, 1987. However, the Order was set aside by the Court in Writ Petition No. 3680 of 1994 and the matter was remanded to the Scrutiny Committee for fresh

hearing. Again the Scrutiny Committee invalidated caste certificate of the petitioner by Order dated June 17, 1995. By Order dated August 7, 1996 this Court again remanded the case to the Scrutiny Committee. The Scrutiny Committee invalidated the caste certificate of the petitioner vide order dated December 24, 1998.

3. The petitioner again approached this Court by filing Writ Petition No. 3459 of 1999 which came to be withdrawn with liberty to file a fresh writ petition. The petitioner thereafter, filed Writ Petition No. 7083 of 2000 which came to be disposed of by the Division Bench on April 12, 2001, by passing the following Order:

"Mr. R.K. Mendadkar, learned counsel appearing for the petitioner submits that in view of the pendency of enquiry proceedings initiated against the petitioner, he may be permitted to withdraw this writ petition. He submits that, if any adverse decision is given by the Enquiry Officer or the petitioner's services are affected by any order passed by the disciplinary authority on the basis of finding of the Enquiry Officer, liberty may be granted to the petitioner to challenge the legality and correctness of the order of the Committee for Scrutiny and Verification of Tribe Claims, Pune, dated December 24, 1998 and the orders of the Enquiry Officer and the Disciplinary Authority."

2. We find that the prayer of the learned counsel for the petitioner is reasonable and accordingly we dismiss the writ petition as withdrawn. In case the enquiry officer gives his findings adverse to the petitioner or the disciplinary authority pass any order adverse to the petitioner's service, it would be open to the petitioner to challenge the enquiry proceedings as well as the order passed by the Committee for Scrutiny and Verification on the Tribe Claims, Pune on December 24, 1998.

3. It would be open to the petitioner to raise all contentions before the enquiry officer challenging the order passed by the Caste Scrutiny Committee."

4. In the meantime as noted by the Division Bench the Disciplinary proceedings were started against the petitioner in terms of para 19.5 (j) and 19.5 (m) of the Bipartite Settlement. The Enquiry Officer submitted his report holding that the charges were proved and the Disciplinary Authority after issuing show cause notice to the petitioner terminated the services of the petitioner vide order dated February 28, 2002.

5. The learned counsel appearing for the petitioner was appointed in 1976 whereas the reference was made for the first time in 1987. It was submitted that where the bank has not reserved its right to scrutinize the caste claim, it is not open for the bank to initiate action against an employee on the basis of the subsequent invalidation of the caste certificate. In any event the bank ought to have referred the matter to the Scrutiny Committee within reasonable time.

6. Reliance was placed, on an unreported decision of the Division Bench presided

over by the Hon'ble the Chief Justice in Anil Vasantrao Shirpurkar v. State of Maharashtra and Ors. (Writ Petition No. 3701 of 2002 decided on July 12, 2002) and the decision of the Division Bench presided over by PANDYA, J. in the case of Chandrabhan v. Director Health Services 1999 (10) Mh. LJ 536.

7. We find considerable substance in the submission of the learned counsel. It is clear from the record and not controverted by the respondent bank that the petitioner joined the services of the bank in 1976. It is also not disputed that reference was made for the first time in 1987, i.e. after 11 years of his appointment. The question is therefore, whether such a period could be said to be reasonable period to initiate proceedings against the petitioner. In Writ Petition No. 3701 of 2002 in similar situation where the reference was made after 5 years the Division Bench observed as under:

"In the leading decision in The State of Gujarat Vs. Patil Raghav Natha and Others, the Supreme Court held that the power of revision must be exercised within reasonable period. So far as reasonable period is concerned, it reserved its right to scrutinize the caste claim, it shall do so, within reasonable time and in absence of any time limit fixed we feel that reasonable limit should be to two years. This limit we are fixing on the basis that ordinarily as a matter of rules while appointing a Government servant, the State Government puts them on probation for a period of two years."

8. In the instant case the petitioner joined the services of the respondent bank on October 14, 1976. He was confirmed after six months. He was promoted to the post of Management Scale I in 1984. Thereafter the petitioner was asked to produce a fresh caste certificate in the prescribed form and the reference was made for the first time in 1987 that too after eleven years of his appointment. Further the proceedings were pending before the Scrutiny Committee from 1987 to 2000. In the facts and circumstances of the case, we are inclined to accept the plea of the petitioner that reference was not made within reasonable time. However, we are of the opinion that since the petitioner does not belong to Scheduled Tribe, he is clearly not entitled to promotion to the post of Officer Scale I.

9. In the result the impugned order dated August 22, 2002 is quashed and set aside. Respondent bank is directed to reinstate the petitioner in the post in which he was appointed with continuity of service. However, the petitioner will not be entitled to back wages.

10. The learned counsel for the petitioner gives undertaking on behalf of the petitioner that in future the petitioner shall not claim any benefit as member of the Scheduled Tribe. The undertaking is accepted.

11. Respondent bank is granted eight weeks time to comply with this Order.

12. Authorities to act on copy of this Order duly authenticated by the Sheristadar of this Court.